**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION.**

**CRIMINAL APPLICATION NO.346 OF 2006**

**IN**

**CRIMINAL APPEAL NO.581 OF 2001**

Pratap Eknath Patil : Petitioner.

versus

The State of Maharashtra : Respondent

Mr.D.G.Khamkar for the petitioner.

Smt.V.R.Bhosale, APP, for the respondent.

**CORAM : D.G.DESHPANDE**

**V.K.TAHILRAMANI JJ.**

**DATED : MAY 04TH, 2006.**

**P.C.**

1. This is 3rd application of this petitioner/original accused No.1 for bail. Earlier application, when this appeal, filed by accused Nos. 1 & 3, came for admission, the Division Bench, comprising of Justice S.S.Parkar and Justice Smt.Ranjana Desai, admitted the appeal and prayer of the accused No.1 for bail

was rejected on the following grounds :-

1. The place from where dead body was thrown into the creek was discovered at the instance of accused No.1;

2. Motor driving licence and the purse of the deceased were seized from that place;

3. There was evidence to show that accused NO.1 was driving the motor cycle of the deceased and had parked it in the area from where it was seized by the police and;

4. There were injuries on the persons of accused No.1 which were fresh when he was arrested on 18th September, 1997, which were possible during scuffle.

Therefore, on the aforesaid four grounds the prayer for accused No.1 for bail was rejected.

2. This accused No.1 then again filed Criminal Application No.1618 of 2002 . It came before Justice G.D.Patil and Justice

Smt.V.K.Tahilramani (one of us). It was rejected on the ground that earlier prayer was rejected and no fresh circumstances were pointed out. Now, therefore, the present criminal application is the 3rd application.

3. When we questioned advocate for the accused No.1, as to what are the fresh circumstances for which we should consider this bail application which is the third application, the advocate for the accused pointed out that the observations of the 1st Division Bench that there were fresh injuries on the person of the accused when he was arrested on 18th November 1997, were contradictory to record. He produced for our inspection a copy of arrest panchanama dated 18th November 1997 which is also there in the paper book page 132. He pointed out that from that panchanama when the accused was arrested there was specifically mention that no injury of any assault was found. He also pointed out that there is no other mention of any kind of injury and also of the fact that the clothes of the accused were blood stained on account of this injury. Therefore, according to him, the finding of 1st Division Bench that there were injuries is

wrong. It might be, at that time, this panchanama was not there.

4. Mr.Khamkar, the learned advocate appearing for the petitioner/accused No.1, also urged that two other accused were granted bail by the Division Bench i.e. Accused No.3 Umesh was granted bail at the time of admission in the sum of Rs.25,000/-. Accused No.2 Ranjana was granted temporary bail for six month but that was confirmed and continued by the order of the Division Bench dated 22.01.2002 in the same sum.

5. The learned APP could not contradict the advocate for the accused about absence of any injury on the person of accused No.1 at the time of his arrest. Admittedly, the reason given for rejection of his bail application by the 1st Division Bench is not as per the record and mistake appeared to have occurred because non-production of arrest panchanama. Since two other accused are granted bail and since the entire case is depend on circumstantial evidence and in addition for the aforesaid reasons and, absence of injury on the person of accused at the time of arrest, the petitioner/accused No.1 is

entitled for bail. Hence the following order :-

:ORDER:

Criminal Application No.346 of 2006 is allowed.

Petitioner/Accused No.1 - Pratap Eknath Patil be released on bail upon execution his P.R. bond of Rs.25,000/- with one or to sureties in the like amount.

He will report to Kapurbawadi Police Station, District Thane once in a fortnight till disposal of appeal.

**[D.G.DESHPANDE,J]**

**[V.K.TAHILRAMANI,J]**